

## REPORT

*Of the Committee on Pensions and Revolutionary Claims, in the case of  
Edmond Booker.*

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JANUARY 9, 1824.

Read, and ordered to lie upon the table.

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The Committee on Pensions and Revolutionary Claims, to whom, on the 16th December, was referred the petition of Edmond Booker, have had the same under consideration; and

### REPORT:

That the petitioner states he is administrator, de bonis non, of Robert Foster, deceased; that he married Elizabeth Robert Foster, daughter of Robert Foster, deceased; that said Elizabeth Robert Foster and James I. Foster are the only representatives in law of Capt. James Foster, his brother, who died in the Revolutionary war, some time during the year 1779, leaving no other person entitled to his estate than the said Robert Foster. The petitioner, in behalf of his posterity, asks whatever may be due for commutation pay, and the additional bounty lands. That Robert Foster, the brother of the said Capt. James Foster, and his only representative, is deceased; marched in the early part of the year 1777, as an officer in the company of his brother James, in the 15th Virginia regiment, holding, as he believes, the rank of a lieutenant, or, at least, of ensign; that he encountered many hardships, and received grievous wounds, particularly one fracturing the skull, and was taken prisoner by the British army in 1778, at Peramus meeting house, or at Germantown, and remained so, or on parole, until the general cessation of hostilities; that it was invariably and currently believed, that Lieutenant Foster served to the close of the war; that he never received any recompence, except his bounty lands. The petitioner (in conclusion) asks the commutation of pay of Capt. James Foster, and the commutation pay (with interest in both cases,) and additional bounty lands, which may be due to Lieut. Robert Foster.

Your Committee further report, that the petitioner heretofore presented his petition, to wit: on the 11th of December, 1822, and the same day was referred to the committee on Pensions and Revolutionary Claims, who very fully reported on the petitioner's claims, the 20th day of December, same year, which report, and annexed documents, your Committee ask to be taken and considered as a part of this their report. No additional evidence has been given to induce an opinion different from that heretofore expressed by your Committee. The adoption of the following resolution is recommended:

*Resolved*, That the prayer of the petitioner ought not to be granted.

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[*Report of the Committee on Pensions and Revolutionary Claims, in the case of Edmond Booker, made Dec. 20, 1822.*]

The Committee on Pensions and Revolutionary Claims, to whom, on the eleventh day of December, 1822, was referred the petition and accompanying papers of Edmond Booker, have had the same under consideration, and

#### REPORT THEREON:

The petitioner states that he is administrator *de bonis non* of Robert Foster, deceased, and that he married Elizabeth Robert Foster, daughter of Robert Foster, deceased, which said Elizabeth Robert and James B. Foster are, as he states, the only representatives and heirs of the said Robert Foster, deceased, and that the said Robert Foster, father of the said Elizabeth Robert and James B. Foster, was the only representative in law of Captain James Foster, his brother, who died in the Revolutionary war, some time during the year 1779, leaving no other person entitled to his estate than the said Robert Foster. The petitioner states, that James Foster marched at the head of his company, in the service of his country, in the beginning of the year 1777; was attached to the 15th Virginia regiment, in which he held the rank of Captain, until some time in the year 1779, when he departed this life, in the army. That the petitioner asks, that whatever may be due for commutation pay, and the additional bounty land, if any, to which he may have been entitled, may be allowed to him.

The petitioner further states, that Robert Foster, the brother of the said Captain James Foster, marched from Amelia county, early in the year 1777, as an officer in the company of his brother James, and joined the army commanded by General Washington, and was attached to the 15th regiment. In this service, the petitioner states, the said Robert continued, holding the rank of Lieutenant or Ensign, in the service of his country, and shed his blood and received grievous wounds in defence thereof, until he was taken prisoner by the British

army, in 1778, either at Peramus Meeting House or at Germantown, and continued either a prisoner of war, or on parole, until the general cessation of hostilities. And the petitioner prays, that the cases of Captain James Foster and Lieutenant Robert Foster may be taken under consideration, and that the commutation pay of Capt. James Foster, and the commutation pay that may be due to Lieut. Robert Foster, with interest in both cases, and additional bounty lands that may be due to Lieut. Robert Foster, may be granted to him.

This committee further reports, that, on the fifteenth of May, 1778, Congress "Resolved, unanimously, that all military officers, commissioned by Congress, who now are, or hereafter may be, in the service of the United States, and shall continue therein during the war, and not hold any office of profit under these states, or any of them, shall, after the conclusion of the war, be entitled to receive, annually, for the term of seven years, if they live so long, one half of the present pay of such officers; provided, that no general officer of the cavalry, artillery, or infantry, shall be entitled to receive more than the one half part of the pay of a colonel of such corps, respectively; and provided, that this resolution shall not extend to any officer in the service of the United States, unless he shall have taken an oath of allegiance to, and shall actually reside within some one of, the United States."

From the words of said resolution, it is inferred that Congress, by that resolution, did promise and agree to give seven years' half-pay, as provided for in said resolution, to all military officers, as described in said resolution, who then were, or thereafter might be, in the service of the United States, and would continue therein during the war, after the conclusion of the war, and be entitled to receive the same, annually; and to no other description of officers whatever—and it is also evident that Congress, by that resolution of the fifteenth of May, 1778, did not make any provision for the widow or children, or heirs, executors, or administrators, or representatives, whatever, of any military officer in the service of the United States, who afterwards might die in the service of the United States previous to the conclusion of the war, and this is manifested by the resolution of Congress, of the twenty-fourth of August, 1780, which resolve is as follows, viz:

"That the resolution of the fifteenth day of May, 1778, granting half-pay for seven years to the officers of the army, who should continue in service to the end of the war, be extended to the widows of those officers who have died, or shall hereafter die in the service, to commence from the time of such officer's death, and continue for the term of seven years; or, if there be no widow, or in case of her death or intermarriage, the said half pay be given to the orphan children of the officer dying as aforesaid, if he shall have left any, and that it be recommended to the legislatures of the respective states, to which such officers belong, to make provision for paying the same on account of the United States:"—and it is evident that, by the said resolution of 24th August, 1780, Congress made provision for the wi-

dows or children, as the case might be, of officers who had died, or afterwards might die in the service of the United States, only, and not for any other description of heir or legal representative whatever. This Committee are of opinion, that the petitioner cannot bottom any claim for half pay or commutation, on the resolution of the 15th of May, 1778, in consequence of services performed by the said Capt. James Foster to the United States—and the petitioner does not state that Capt. James Foster, who the petitioner states to have died some time in the year 1779, did leave a widow, or children, at the time of his decease, on account of whom a claim might have been set up, and even in that case, Congress did not do otherwise than to “recommend to the legislatures of the respective states, to which such officers belonged, to make provision for paying the same, on account of the United States,” as is stated and resolved in and by the resolution of the 24th August, 1780—and hence, this Committee are of opinion that the petitioner cannot bottom any claim, such as that by him stated on the said resolution, of the 24th of August, 1780, in consequence of services performed by the said Capt. James Foster. The resolution of the 15th of May, 1778, directed the beginning of the payment, annually, of seven years half pay, to be to the officer who continued in the service of the United States, after the conclusion of the war—and the payment, annually, of the seven years half pay to the widow, or children, of a deceased officer, was, by the said resolution of the 24th of August, 1780, directed to commence at the time of the death of the officer. The petitioner states that lieutenant or ensign Robert Foster was taken prisoner by the British army some time in the year one thousand seven hundred and seventy eight, and that he remained either a prisoner of war, or on parole, until the general cessation of hostilities; hence, it is inferred, that the said lieutenant or ensign Foster could not be performing service in the line of the army of the United States—if a prisoner, he was with the enemy; if on parole, it will not be presumed he was performing service on behalf of the United States against the enemy.

On the 11th February, 1784, a committee reported to Congress as follows: that, by a resolve of November 24, 1778, it was provided that all deranged officers should be entitled to one year's pay; and it was further provided, that officers who had been prisoners with the enemy, and then were, or thereafter might be exchanged, should, if appointed by the authority of the States, be entitled to return into the service in the same rank they would have had if they had not been captured, under certain restrictions, and that they should receive half pay, until the time of their again entering into the service. Under this act, certain officers claim half pay to the end of the war, and the commutation for half pay from that period during life; on which the Committee observe, that the half pay, first mentioned, was promised as a temporary support to such officers as should be re-appointed by their respective States, and to none besides, and that all other continental officers, who have been prisoners with the enemy, and deranged, are entitled to one year's pay, and nothing besides. That



such was the intention of Congress, is explained by the subsequent acts of May 22d, 1779, and May 26, 1781. There is no act under which those officers can claim commutation for half pay. On this subject, this Committee observe, that it does not appear that lieutenant or ensign Robert Foster did, at any time after he was a prisoner with the enemy, make application to, and was admitted and directed by the state of Virginia, to join again in the line of the army, or that he was at any time afterwards, during the Revolutionary war, arranged in the line of the army; and hence it is presumed, that he may have received the one year's pay as provided for by said resolution, together with such other pay as was due to him.

This Committee further report, that there does not appear to be any act or resolution of Congress, under which the petitioner has any right to claim commutation of half pay, for, and on account of, any services performed by captain James Foster, or for, and on account of, services performed by lieutenant or ensign Robert Foster, in time of the Revolutionary war.

Congress on the 16th of September, 1776, resolved, that Congress make provision for granting lands in the following proportions: to the officers and soldiers, who shall so engage in the service, and continue therein to the close of the war, or until discharged by Congress, and to the representatives of such officers and soldiers as shall be slain by the enemy. The petitioner does not shew, that captain James Foster was slain by the enemy, but that he died in the army sometime in the year 1779. The petitioner does not shew, that lieutenant or ensign Robert Foster continued in the service of the United States to the end of the war, or that he was discharged from the service by any resolution of Congress; that there does not appear to be any act or resolution of Congress, on which the petitioner can bottom any claim for bounty land from the United States.

That in this case of the petitioner, recourse for information has been had to the Department of the Treasury, and a document has been received by the Committee from that Department, to which document reference is had. By that document, it appears that the name of Robert Foster is not found on the record of officers serving to the end of the war. That document referred to does not shew that the petitioner has any claim for commutation or bounty land, on account of services performed by Captain James Foster, or that the petitioner has any claim to commutation or bounty land, on account of services performed by Ensign Robert Foster.

This Committee further report, that, taking this case fully into consideration, and also the several acts and resolutions of Congress, respecting commutation of half pay and bounty land, the Committee is of opinion, that the petitioner has not, in this case, any just claim against the United States, for commutation of half pay, or for bounty land, for services performed by the said James Foster, or by the said Robert Foster, and therefore submit the following resolution:

*Resolved*, That the prayer of the petitioner be not granted.

## TREASURY DEPARTMENT,

17th December, 1822.

SIR: I have the honor to return the petition of Edmond Booker, with the papers transmitted in your letter of the 13th instant. The evidence herewith communicated is submitted to the consideration of the Committee.

I remain, with respect,

Your most obed't serv't,

WM. H. CRAWFORD.

The Hon. JOHN RHEA,

*Chairman Committee on Pensions and Revolutionary Claims.*

TREASURY DEPARTMENT, *Third Auditor's Office,*

December 16th, 1822.

SIR: I have the honor to state, in reply to the reference to this office, of the petition, and accompanying documents of Edmond Booker, as the legal representative of Captain James Foster, of the Virginia line, during the Revolutionary war; and also of Robert Foster, an ensign in the same service, brother of the said James, for both of which he claims commutation, and for the former, land in addition; stating, that the latter has received land:

In the case of Captain Foster, he having died in service, in the year 1779, as stated in the memorial is not, according to the resolutions of Congress, entitled, to land nor commutation. And in regard to Ensign Robert Foster, his name not being on the record of officers serving to the end of the war, it is presumed he was not considered in service at that period, and therefore likewise debarred land and commutation from the United States. The land the petitioner states to have been received by lieutenant Robert Foster, must have been issued by the state of Virginia, none having been granted by the United States, as appears on inquiry at the proper office.

The records of the Virginia line, and indeed most of the Revolutionary documents, having been destroyed, no trace of the services of either of the officers named, can be discovered in this office. The papers are returned.

With great respect,

Your obedient servant,

PETER HAGNER, *Auditor.*

The Hon. WM. H. CRAWFORD,

*Secretary of the Treasury.*